

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JAMES BONINI  
CLERK

2009 NOV 27 A 11:44

Thomas McQuillian  
149 W. 52<sup>nd</sup> Street  
Shadyside, OH 43947

Plaintiff,

vs.

United States Small Business Administration  
National Guaranty Purchase Center  
Herndon, VA 20170

Defendant.

CASE NO.

**2:09-cv-1084**

JUDGE

**JUDGE WATSON**

**MAGISTRATE JUDGE KING**

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**COMPLAINT FOR DECLARATORY JUDGMENT**

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Plaintiff Thomas McQuillian by and through his undersigned counsel and for his complaint against United States Small Business Administration, hereby states and alleges as follows:

**PARTIES**

1. Plaintiff Thomas McQuillian is a resident of 149 W. 52<sup>nd</sup> Street, Shadyside, Belmont County, Ohio 43947.
2. Defendant United States Small Business Administration, National Guaranty Purchase Center is an agency of the United States of America and holds a mortgage on real estate the Plaintiff owns in Belmont County, Ohio.

**JURISDICTION AND VENUE**

3. Jurisdiction is conferred on this court by 15 USCS Section 634(b)(1).

4. Venue is appropriate in this district under 28 U.S.C. Section 1391(e).

### STATEMENT OF FACTS

5. McQuillian and partner obtained an SBA approved Mortgage from Steel Valley Bank, N.A. in June of 1997. The mortgage was placed on McQuillian's real estate located in Wood County, West Virginia and Belmont County, Ohio.
6. The Belmont County, Ohio real estate was used as additional collateral for said mortgage and the property is described as follows:

Situated in Section 14, Township 4, Range 3 of the Township of York, County of Belmont, State of Ohio, being Parcels One and Two of the Ramsey Property, as recorded in Volume 556, Page 163 of the Belmont County Record of Deeds, being more particularly described as follows:

Begin at a point in the center of Captina Creek, the Southeast corner of the herein described 7.5242 acre tract. Said beginning point is the same beginning point of Parcel One, as described in Volume 556, Page 163 of the Belmont County Record of Deeds. The Northwest corner of Section 14, Township 4, Range 3 bears N 25-17-58 W 2673.70' from said beginning point, bearing on the West line of Section 14, Township 4, Range 3 being N 5-46-00 E. Thence from said beginning point, and leaving Captina Creek, N 62-35-00 W, st. 103.56' passing on line an iron pin, 365.67' to an iron pin. Thence N 48-11-00 W (crossing State Route 148) 144.70' to an iron pin. Thence N 78-11-00 W 54.50' to an iron pin. Thence S 74-37-00 W (with an existing fence line) 168.60' to an iron pin. Thence N 12-33-00 E (with an existing fence line) 637.10' to an iron pin. Thence S 48-15-00 E (with an existing fence line) 283.30' to an iron pin on the Southwest corner of Parcel Two, as recorded in Volume 556, Page 163 of the Belmont County Record of Deeds. Thence with the lines of Parcel Two, the following three (3) bearings and distances: N 78-44-00 E 64.08' to an iron pin; S 51-31-44 R 48.08' to an iron pin; and S 43-44-00 W 53.97' to an iron pin on the Southeast corner of Parcel Two and on a North line of Parcel One. Thence with the lines of Parcel One S 48-15-00 E 81.32' to an iron pin. Thence S 55-54-00 E, at 319.50' passing on line an iron pin, 399.50' to a point in Captina Creek. Thence in and down Captina Creek S 25-21-00 W 364.09' to the place of beginning, containing 7.5242 acres.

There is excepted from the 7.5242 acre tract the right-of-way for State Route 148 and any previous exceptions for minerals and or rights-of-ways.

The above descriptions was prepared by JOHN R. GREEN, P.S. 4169, from an actual field survey made in January of 1990.

Being the same premises conveyed to Marvin H. Anshutz and Marcella Anshutz by General Warranty Deed dated \_\_\_\_\_, 199 , and recorded in Volume 660, Page 391, of the Records of Deeds of Belmont County, Ohio.

7. The mortgage enabled McQuillian to open a Powerlube, Inc. on the real estate he purchased in Wood County, West Virginia.
8. McQuillian's business, Powerlube, Inc. closed in 1999. A business and personal Chapter 7 Bankruptcy was filed and McQuillian was relieved of any personal liability on the mortgage.
9. Steel Valley Bank foreclosed on the Wood County, West Virginia real estate and sold the real estate for the balance on the mortgage which was \$123,163.00.
10. The sale of the Wood County, West Virginia property eliminated the liability on the mortgage.
11. Steel Valley Bank closed prior to releasing the mortgage on the Belmont County, Ohio real estate.
12. Steel Valley Bank is no longer in existence and is now unable to release the mortgage which was recorded in Volume 676, Page 735 of the Records of Mortgages of Belmont County, Ohio and is attached hereto as Exhibit A.
13. The Small Business Administration took over the mortgage in compliance with the SBA guaranty.
14. The Small Business Administration has failed to cooperate with McQuillian and release the mortgage.

**PRAYER FOR RELIEF**

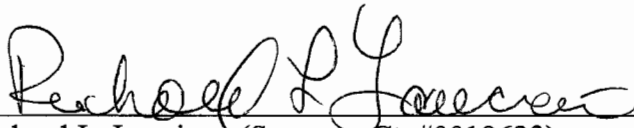
WHEREFORE, McQuillian demands that a declaratory judgment be entered in his favor, declaring as follows:

- (a) that the mortgage recorded at Volume 676, Page 735 of the Records of Mortgages of Belmont County, Ohio is invalid and no longer effective;
- (b) that the entry from this case shall act as a release of said mortgage when filed with the Belmont County Ohio Recorder;
- (c) for the costs herein;
- (d) such other and further relief as the Court deems fair and equitable.

Respectfully submitted,



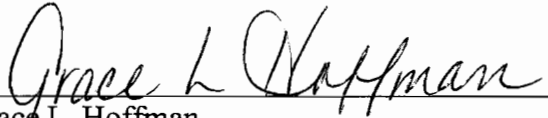
Grace L. Hoffman (Supreme Ct. #0051862)  
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(740) 676-2034  
Attorney for Plaintiff



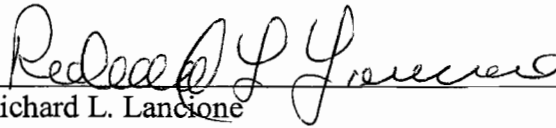
Richard L. Lancione (Supreme Ct. #0019623)  
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3800 Jefferson Street  
Bellaire, OH 43906  
(740) 676-2034  
Attorney for Plaintiff

NOTICE TO CLERK

Please issue service of Summons and Complaint upon all parties set forth in the caption of this Complaint, at the address listed and set forth in caption herein, pursuant to Rule 4 of the Ohio Rules of Civil Procedure and Ohio Revised Code §4123.512.



Grace L. Hoffman  
LANCIONE, LLOYD & HOFFMAN  
Attorney for Plaintiff



Richard L. Lancione  
LANCIONE, LLOYD & HOFFMAN  
Attorney for Plaintiff